

Review of Pascale Fournier, *Muslim Marriage in Western Courts: Lost in Transplantation*

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Legal scholar Pascale Fournier's *Muslim Marriage in Western Courts: Lost in Transplantation* skillfully outlines the complex and contradictory ways in which *mahr*, typically understood as a gift to the bride stipulated in the *nikah* (Islamic matrimonial contract), has been translated in contemporary Canadian, American, German and French courts in post-migration divorce rulings between 1879–2005 (with most cases from the 1970s–1990s). Fournier offers a close reading and analysis of an impressive number of divorce cases related to *mahr*, demonstrating that Western courts have ruled unpredictably both nationally and internationally, ranging from a penalty imposed on Muslim husbands (where, for instance, they would be responsible for the division of family assets, spousal support and *mahr*) to a punishment for Muslim wives (where *mahr* replaces alimony and the equitable division of property). Fournier argues that 'once *mahr* is uprooted from Islamic family law and transplanted into a Western chamber of law, it can never go back home again' (p. 2). These cases also underscore how the interpretation of law has regulatory power over individuals not only in the politics of divorce but also in conceptions of marriage and in broader lived gender relations.

The book begins with a comprehensive background of how *mahr* has been differently conceptualized with attention to its dynamic and changing interpretations in schools of Islamic law. Scholars of law and feminism are also diverse in how they define it, ranging from a feminist entitlement to a patriarchal disempowerment. Fournier charts how *mahr* is discussed in the Qur'an and other pertinent Islamic legal sources (cited at length in two appendices). The ability to initiate divorce (for Muslim women) and the relative costs of *mahr* in divorce depend on whether the

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marriage was Islamically dissolved through *talaq* (the most common unilateral dissolution available to men), *khul* (which can be initiated by women but usually means the loss of *mahr* and child support) or *faskh* divorce (the most difficult to receive and only granted if a woman can prove grounds to a judge). *Mahr* can also be received through inheritance. Fournier's literature review of Islamic family law is useful as its focus on *mahr* differs from other English-language treatments of Muslim Family Law (e.g. Wani, *The Islamic Institution of Mahr*, University of Kashmir, 1996; Pearl and Menski, *Muslim Family Law*, London, 1998; Mir-Hosseini, *Marriage on Trial: A Study of Islamic Family Law*, London, 2000; and Esposito and DeLong-Bas, *Women in Muslim Family Law*, Syracuse University Press, 2001). She introduces select cases from Egypt, Tunisia and Malaysia as counterpoint examples that might be of interest to some readers. From a functionalist perspective, the type of divorce along with the broad scope of legal sources and interpretative lenses highlight how—despite the unilateral option given solely to men in *talaq*—both the groom and bride can utilize *mahr* as a bargaining tool in finances and familial obligations. Fournier convincingly demonstrates that this internal legal pluralism is often lost in its characterization within Western courts.

Chapter two contextualizes legal regimes in Canada, the United States, France and Germany where these cases have taken place in a systematic and well-organized fashion. Of note, in Canada and the United States, family law applies regardless of residency; in France and Germany, family law is tied to citizenship. Yet, given how in German courts, for instance, the treatment of Islamic law is 'everyday business' (p. 59) and my own research interest into how *mahr* is conceptualized by Canadian Muslim women in the Greater Toronto Area, I wonder about the *mahr* cases presented before the courts which are *not* transplanted, that is, where marital *nikah* negotiations were undertaken and negotiated in the West. How do notions of Islam and family law come to be interpreted in these cases, which presumably will become increasingly numerous? Julie Macfarlane's research into Islamic divorce in southern Ontario (Canada) demonstrates that even if a majority of young Canadian Muslims do not consider themselves as practicing and/or do not attend mosque, they do seek out a *nikah* at the time of marriage and, therefore, in the case of divorce, will negotiate *mahr* in a Western court.

The diversity of national, provincial and state legal regimes which differently weave domestic family law, contract law, constitutional law and engagement with international private law means that framing these cases through the context of religion-state relations is not the most useful way to theorize them. Instead, in chapter three, Fournier proposes three principal ways in which *mahr* has been interpreted in Western courts: (A) a multicultural liberal-legal pluralist approach which grants *mahr* cultural/family recognition but sees it as outside Western legal adjudication; (B) a secular liberal-formal equality approach which enforces *mahr* as a contract making its religious underpinnings irrelevant; and (C) a feminist liberal-substantive equality approach which exposes the unequal socio-economic and gender dynamics in these marital arrangements. These methods share a liberal ideology. This tripartite grid allows for compelling comparative analysis which, given the differing legal regimes in these four nation states, further underscores the unpredictable ways *mahr* is translated in Western courts as agreements, legal debts, and (sometimes as too abstract or too religious) contracts.

Chapter four examines the same international cases to show the contradictions laden in the ways *mahr* has been subjectively and ideologically received in Western courts through four lenses: (1) through contradicting doctrines and outcomes; (2) as ends and as means; and through false binary conceptions of (3) state and religion and (4) of Islam and the West. While there are a few minor factual errors in her description of a Canadian report on the separation of religion and state (the 2004 Boyd Report), Fournier's astute analysis further underscores the inconsistency within which *mahr* has been adjudicated in Western courts. In the Canadian case, for instance, Fournier usefully critiques how these binaries not only obscure the diversity within Islam and complexity of sharia but also negatively position transnational Muslims.

Fournier draws from these rich cases to creatively imagine how women negotiate religious and secular spheres in chapter five. Six fictive cases feature marriage dissolution and *mahr* negotiation in court. These paradigmatic cases tease out how 'background legal rules and background social norms (employment, age, immigration, and social security, among others) might affect and have affected the shape of *mahr* disputes' (p. 137) and the 'hidden' interpretive elements within adjudicative discourse. Fournier's focus is on the legal cases, but some readers might be left wanting more ethnographic data on the men and women who enter these Western courts and the negotiations not figured in official documents.

The strength of *Muslim Marriage in Western Courts* is its readability. It is well-positioned with the previous literature and it does not assume previous knowledge of law, theology or feminist critiques. For these reasons, the book will attract readers from a number of disciplines who will differently draw from the material. As a Religious Studies scholar interested in Islam in the West, Fournier's unpacking of the four socio-political contexts and differing presentations and reception of cases were the most pertinent parts of her analysis for me. Legal scholars may find her division of the cases into three theoretical models more useful. No matter one's entry into the question of *mahr* in the West, the transnational encounter of various legal systems on this evocative matter raises questions of gender, marriage, religiosity, private arbitration, and *sharia* (Islamic law). Fournier's contemporary legal study of *mahr* therefore promises to be an integral tool and an important reference for students and scholars in a cross-section of fields.